

Dealing with Tough IEP Team Members

by

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Laying the Groundwork for Consensus Decision-Making

Put simply, good preparation for an IEP meeting is the most important means of avoiding a conflicted and tense meeting and increasing the odds of a positive outcome. School staff faced with a potentially contentious IEP meeting or IEP team member must prepare for the meeting in a thorough and organized manner. The team should convene a staffing well ahead of the meeting date to allow ample time for preparation. Holding a hurried staffing the day before the meeting, or two hours before the meeting, will lead to lapses in planning and an unduly tense meeting. Pre-meeting staffings are essential to accomplish some or all of the following tasks:

- **Anticipate the problem issues**

The single most important item of preparation for a potentially difficult IEP meeting is identifying the agenda items that are likely to create conflict between the school and the parents, or among staffpersons. In many cases, these issues are clear to all the stakeholders. For example, the parents may have made clear that they oppose any proposal of a change of placement to a self-contained behavior support unit for their child with emotional disturbance. Or, their statements to campus staff may make clear that they believe that certain regular classroom teachers are not implementing required IEP accommodations. In other situations, a parent may have requested a meeting to be held as soon as possible, with school staff having little idea of the parent's exact concerns.

In cases where staff is unsure what the parents' concerns might be, special education and campus staff should investigate at the campus to determine what issues will require particular attention. Anticipating the problem issues is the first step in developing ideas, options, and proposals for deliberation and parental input at the meeting proper. In anticipating the areas of potential difficulty, staff should try to understand why the issue is of concern to the parents, when the concern arose, and how the issue fits within the context of long-term collaboration efforts with the parents. Make sure that the staffing includes staffpersons that have communicated most closely with the parents over the longest period of time.

Other ideas for anticipating the problems areas can include reviewing e-mails and other correspondence between the school and parents, reading past

IEP team meeting minutes or deliberation notes, and reviewing evaluation reports' summaries of parent statements and input.

- **Brainstorm and develop potential proposals and contingency plans (alternate proposals or options) for the anticipated issues**

Even if school staff collectively agrees on a particular proposal for programming or placement, it is generally advisable for schools to prepare a variety of options for discussion at the IEP meeting. Of course, each of the proposed options must represent different means of reaching the same result: a FAPE. In working up options, staff should sketch out the relative pros and cons of each option from the school's perspective. Although in many cases, the parent's input will be instrumental in making a final determination from among the options, school staff should be ready to render an opinion on, and propose, the best selection in case the parent is unsure.

- **Collect and organize documentation of student progress**

All available documentation of student progress should be collected and reviewed in anticipation of the IEP meeting. Progress documentation may be in the form of handwritten markings on IEP objective sheets, computerized printouts, graphs, written periodic progress reports, formal IEP report cards, teacher notes, teacher grade books, criterion or curriculum-based assessment data, or a combination of the preceding. Often the various sources of data are not exactly in unison, so it is important to decipher the overall trends in the data prior to the meeting. Staff may want to summarize the progress data in a new collected data document that can be reviewed at the IEP meeting.

The progress data does not simply serve to show student progress. It also indicates the rate of progress, identifies areas of relative weakness, and helps provides direction for the new IEP. Staff should be prepared to answer questions about the methods by which the data was generated, and the reliability of those methods, particularly for parents that are skeptical about their child's progress.

Note—The degree to which parents will be receptive regarding progress data bears relation to the degree to trust parents have in the educational program and the instructional staff. In low-trust situations, parents may doubt even the most consistent and corroborated progress data, so staff may want to rely on the most objective possible measures of progress, and provide additional informal corroborative data as support.

- **Review new assessment data to build toward consensus**

Since the foundation of the IEP is an understanding of the student's educational needs based on current evaluation data, IEP teams must review the results of their evaluations and reevaluations prior to proceeding to developing the IEP. In addition, schools are under a duty to review private evaluation data submitted by the parents, as long as it meets district evaluation criteria, whether it be in the form of a privately-obtained evaluation report or a publicly-funded

independent educational evaluation (IEE). 34 C.F.R. §300.502(c)(1). Indeed, a failure to review a parent-provided evaluation can be a serious procedural violation, since it can easily be found to have impeded a parent's right to participate in the IEP development process. See e.g., *In Re Student with a Disability*, 55 IDELR 88 (SEA NY 2010)(IEP team's failure to review private speech evaluation provided by parent was a procedural violation that significantly impeded parent's opportunity to participate and team's ability to formulate IEP based on most current data).

Therefore, if the parents have submitted private evaluations, staff should collectively review the reports and compare the findings, conclusions, and recommendations to those in the school's evaluations. This process requires an examination of the private evaluations' sources of data, the specific assessment instruments used, how the assessment data was interpreted, and whether the conclusions and recommendations flow naturally from the data collected. In difficult situations, equally appropriate evaluations can reach different conclusions, and the team must be prepared to debate the relative worth of the evaluation information, or reconcile it in some logical fashion. Parents, on the other hand, must understand that private evaluation data does not "trump" school evaluations, and that not all recommendations from a private evaluation might be implemented. Similarly, school members of the IEP team must recognize that the evaluation data is the most important factor in the educational decision-making, but not the only factor. It may be in the interest of the student and the school for the team to make compromises in order to secure parental agreement and avoid litigation.

- **Cultivate an atmosphere of openness to opposing viewpoints**

In a committee-based decision-making process, disagreement must not be allowed to manifest as conflict and grow into dispute. With a multi-data foundation for decisions, disagreement as to the meaning of the collected data cannot be seen as uncommon or counterproductive. Make sure in either communications among staff or in discussions with parents at IEP team meetings, disagreement is viewed positively, as a contributing aspect to the decision-making process. Team members who feel that their intellectual disagreement is viewed with contempt will respond negatively and create conflict. Openly acknowledge the value of the opposing viewpoint and subject it to the push and pull of discussion of the pros and cons of the viewpoint on its merits.

- **Develop a meeting agenda and stick to it**

Some state educational agencies publish standardized IEP meeting agendas for their LEAs, while in other situations individual school districts create their own agenda forms. Make sure, however, that the agenda is tailored to the purpose of the meeting at hand, and that staff reviews it *prior to* the meeting. The agenda can thus serve as a useful checklist to ensure proper preparations for all aspects of the meeting process. (Attached to these materials is a sample pre-meeting/meeting checklist to help ensure both appropriate

preparation and completeness of the deliberations and determinations). Helpfully, many schools now use software-based IEP systems that walk the team through the process fairly automatically. It can be dangerous, however, to let the computer-based systems lull teams into a false sense that preparation for meetings is less necessary than they might think.

Note—Parents should also prepare an “agenda” of sorts, to organize their input and articulate their concerns ahead of the meeting. It is always surprising how useful the very exercise of committing one’s concerns to writing helps focus the issues and leads to more effective advocacy.

- **Understand the broad legal framework of the issues in question**

One does not “learn” the IDEA statute, its federal regulations, and state regulations and then go about applying the rules forever thereafter. The regulations and rules require frequent re-reading and study. Even experienced special education attorneys start analyzing a case or issue by returning to the applicable provisions of the Act and its regulations. Similarly, staff may find that they will need to re-review the pertinent legal framework of rules when a parent is raising specific issues involving the requirements of the law. In difficult cases, this process may require the assistance of legal counsel.

While it is generally not wise to have the IEP team digress into a full-blown legal back-and-forth on the meaning and interpretation of the provisions of a federal or state regulation, team members should have a working knowledge of the particular rules that may come up at a meeting. You may want to have a copy of the federal and state regulations available in the meeting room.

Note—For parents, the USDOE website has a variety of guidance documents intended to communicate the requirements of the IDEA in a fully neutral, accurate, and understandable fashion. When disagreements arise, it’s helpful for parents to know what the school must do, and what it does not really have to do based on the law and regulations.

- **Understand the roles of IEP team members and other participants**

A straightforward but necessary aspect of the preparation process is ensuring the attendance of all required IEP team members well in advance of the meeting. Securing specific staffpersons’ attendance ahead of time is needed in order that they can participate in the pre-meeting preparation process.

The IDEA requires that certain persons be in attendance at every IEP team meeting, although other participants may also attend at the discretion of the school or the parents. 34 C.F.R. §300.321(a). Under the law, the following persons are *required* IEP committee members—meaning, you can’t have a valid meeting without them:

1. the **parents**;

2. at least one **regular education teacher** of the child, if the child receives any services in regular classes or might receive services there;
3. at least one **special education teacher** or a special education provider of the child;
4. a representative of the school who is qualified to provide or supervise special education services, is knowledgeable about the general (regular) curriculum, and is knowledgeable about the resources available at the school (i.e. an “**administrative**” or “**supervisory**” representative);
5. an “**individual who can interpret the instructional implications of evaluation results**,” who may be one of the members listed above (except for the parent);
6. at the discretion of the parent or the school, **other individuals** who have knowledge or special expertise regarding the child, including related services personnel; and
7. the **child**, whenever appropriate (particularly in meetings where transition services will be addressed—*see* 34 C.F.R. §300.321(b)).

Although IDEA 2004 contains provisions that allow excusal of required members in certain circumstances, a potentially difficult IEP meeting with difficult members is probably not one where a school may want to take advantage of the team flexibility provisions of the IDEA. Approaching the parent in a potentially contentious situation with the request to excuse one or more members from the IEP meeting may set a negative tone before the meeting even begins.

Indeed, it is not only imperative to ensure the attendance of all required members and staffpersons with additional helpful information (e.g., key related services personnel, if the services will be at issue), schools will want to also ensure that each person who will attend is individually prepared to provide their information and input in a succinct and coherent fashion.

Dealing with the Difficult School Staffperson or Administrator

Although the student’s parent has a personal interest in the subject of the discussion, it is not uncommon for a school staffperson or administrator to become an obstacle to positive and collaborative decision-making. There are several types of difficult staffpersons, and certain approaches work best for each.

The Dissenter—This staffperson always finds a reason why a decision is unsound or a course of action will not work. They may continually express negative attitudes, resist coherence with the team, and affect the overall morale

of the group. But, the Dissenter can point out problematic areas with accuracy, and can thus be channeled into playing a positive role. As you acknowledge a problem that the Dissenter is pointing out, have him or her explore a solution or mitigating measure for the problem. Have the team join in debating the degree to which the problem may exist and what measures can be taken to avoid the problem.

The Overlord—Thankfully less common, this administrator either overestimates his or her authority over the decision-making, or is perfectly willing to exercise it anyway. This can lead to second-guessing of IEP team decisions, overly influencing deliberations, or outright post-hoc vetoing of IEP team determinations, as in the following case:

Case Illustration—In the Texas case of *Student v. Caldwell ISD*, 058-SE-1110 (SEA TX 2011), after an AT evaluation recommended a laptop, scanner, and software, the IEP team agreed with the recommendations, but a dispute arose over whether the local special education cooperative or the District were responsible for paying for the AT. Outside of the IEP team process, the District’s superintendent reviewed the software, questioned whether it would be appropriate for the student, and determined that the District would not pay for it. On this point, the Hearing Officer found that the superintendent predetermined the outcome of IEP team deliberations, thus denying the parent’s a meaningful opportunity to participate in the decision-making, and thus violating IDEA. In this case, the question arises whether this was *pre-determination*. That happens when decisions are made *before* the IEP team meets, and then parental input is ignored. Here, more accurately, the issue was that the superintendent vetoed the decision that was already reached by the IEP team, perhaps due to the financial dispute with the co-op. Districts in co-ops or similar shared services arrangements, however, must keep in mind that in most shared services arrangement agreements, the individual school districts retain the ultimate FAPE responsibility, not the co-op.

The Less-than-Competent—This staffperson may be conscientious, but may lack the skill set to navigate the full demands of the job, especially with things get difficult. At times, this person may be unaware of their shortcomings. Other times, they present as eminently competent, but do not properly follow through to complete tasks or commitments. Additional training, monitoring, and support are usually needed to get the skills to match the level of commitment the staffperson exhibits. It is crucial that key compliance items for which this staffperson is responsible be monitored closely.

The Legalist—Some team members see legal issues lurking in the smallest decision and, if left unattended, can paralyze the decision-making process. But, this staffperson can be useful in identifying a legal issue that others may have overlooked. The team should address the issues ahead of meetings and employ legal counsel to ascertain whether the issue is significant or not, and how it could be addressed.

The Hair-Trigger—This staffperson has the tendency of overreacting into confrontation, sometimes at odd points in the process. There may be external motivators for the behavior at work. It is crucial to work with the staffperson ahead of IEP meetings to avoid a confrontation with the parent. Make sure the staffperson anticipates the problem areas the parent may bring up that pertain to his or her responsibility. Be firm, however, in stating that professional demeanor will be required, and inappropriate conduct during meetings will not be tolerated. Be clear in your expectations and model the precise behavior you expect to see.

The Less-than-Conscientious—This staffperson has difficulty meeting job expectations, and may try to pass tasks on to others, claiming they are “swamped” with work. The best approach with this staffperson is to set specific and clear expectations, monitor their progress, and hold them accountable for meeting the expectations. Be firm with deadlines, and make sure all team members are expected to meet deadlines as well.

Case Illustration—In *H. B. v. Gloucester Township Sch. Dist.*, 55 IDELR 224 (D.N.J. 2010) a federal court held that the District made up its mind about a child’s placement before IEP meetings. For three years, the parents’ tried to get the team to consider alternative placements to no avail, as the school proposed the same placement for that period of time. The District’s director of special education testified that there was no need to discuss other less restrictive placements because the District had already decided that any greater degree of inclusion time was inappropriate. Thus, anytime the parent reasserted such option, the school refused to consider it. Another team member testified that further discussion of placement options was unnecessary because the parties were at “opposing poles.” At meetings, therefore, parent-proposed placements were not discussed, and at times, questions asked by the parent were openly ignored. “Sometimes her questions were literally met with only silence.” Another team member, asked why she never explained to the parent why the autism program was the best option, answered that the meeting “was a couple of hours and I was tired.”

Handling the Difficult IEP Team Member During the Meeting

Reasonable Time Limits—Meetings that go on for several consecutive hours can lead to frayed nerves and work against the collaborative approach that the IDEA seeks to promote during meetings. It is in overly lengthy IEP meetings that tempers can flare and mistakes can be made. Thus, schools may want to consider setting time limits for meetings, so all participants, including the parents, can schedule their day accordingly. The time limit should be (1) reasonable in light of the tasks at hand, and (2) written in the IEP team meeting notice. At the beginning of the meeting, staff can indicate that if the team is close to concluding, it can press on to finish, but that if a significant amount of work needs to be completed and the allotted time has expired, a second session will be scheduled for the earliest opportunity. It is generally preferable to have a

difficult meeting over two or even three sessions rather than trying to squeeze the work into one massively long meeting.

Addressing School Staffpersons' Fear of Saying "Something Wrong"—

An inordinate fear of saying "something wrong" keeps informed and competent staffpersons from voicing opinions and input that the IEP team needs. Teachers that are new to the process may want to write out some bullet points to outline the key aspects of their input and recommendations regarding the child as part of staffing for the meeting. They may want to practice out loud how to state their input. Usually, teachers and related service providers are too concerned with how articulately they are stating their input, when, in reality, the team is really more interested the substance of their professional opinions regarding the child and his or her performance. If it's your honest opinion about the child, it can't be "wrong." It is what the team needs to move it toward consensus, and ultimately, a finalized IEP.

But, staff must acknowledge the need for compromise—Despite a professional educator's heartfelt position about what course of action is best for a child's education, however, there is an expectation of negotiation and compromise in the IEP team process. Compromise is required among staffpersons with different ideas about the student's needs and how to meet them, and with parents, who have a personal perspective and expertise regarding their child's education. A staffperson that is unwilling to compromise to meet staff and parents halfway is not working collaboratively within the IEP process. Impress upon such a staffperson that compromise to achieve agreement is not an abdication of educational principles, but simply part of committee decision-making.

A Word About Mistakes—A common misconception regarding special education disputes is that cases in litigation are won or lost on fine points of law or technical compliance issues. In fact, litigation often hinges on poor decisions; situations where staff have lost sight of the fundamentals of the student's needs and how to properly meet them. Work to make sure no one loses focus on the fundamental facts and aspects of the dispute in attempting to respond to every argument, question, and point.

Dealing with the Confrontational Parent/Advocate:

- Set a positive tone early on that establishes a civil forum for discussion and in which opposing viewpoints are respected and not viewed with contempt or anger.
- Realize that aggressive behaviors in interpersonal confrontations often reflect frustrations of parents/advocates with good intentions, but limited skills in handling emotionally-charged collaborative decision-making.

- Do not allow plain intimidation tactics (cross-examination type of questioning, personal or professional attacks, threats of litigation) to derail a common-sense data-based decision-making process.
- Honestly explore to what degree and how you are a part of the problem. Are your choices of words harming the parent/advocate's self-esteem as effective advocates for the child? Be willing to open the issue for discussion so you can "reset" the process.
- Set ground rules for conduct of all members and review the ground rules as needed during a meeting.
- Avoid overreaction, lecturing, or complaining, and keep your body language in mind.
- Cancel the meeting if despite reminders, the parent or advocate persist with inappropriate negative conduct and document the reason for the cancellation of the meeting.
- At the next meeting, work to change the tone by talking about the previous meeting and the need to make efforts to stay in a problem-solving framework.

Case Illustration—While most advocates attempt to bridge communication gaps between the parents and school staff, some unfortunately fall prey to the confrontational mindset, sometimes to the student's detriment. In *School Dist. of Sevastopol*, 102 LRP 25489 (SEA WI 1996), the parents of a child with a disability had developed such a conflict with the school that they were unwilling to send the student to school or discuss homebound services. After much negotiation, a set of conditions was agreed to in order to discuss interim services. At the start of the meeting, however, "[t]he advocate then remarked that it made no difference what the district did because the parents would not accept it based on the "enmity" between the parties." When the parents filed a due process hearing, the advocate promptly came into conflict with the hearing officer, who refused to allow videotaping of prehearing conferences. After accusing the hearing officer of bias, and demanding that she be removed, the hearing officer ultimately was forced to dismiss the matter due to the non-cooperation of the parents and their advocate. The Hearing Officer stated that "[w]hen the Hearing Officer then wrote that sanctions would be imposed against either party for noncompliance with her orders in these proceedings, the parents decided that the Hearing Officer was "no longer acceptable" to them. Thereafter, their tone became increasingly sarcastic and supercilious. Their pattern of looking for fault—with the district—now took on the added dimension of looking for fault with the Hearing Officer."

Dealing with Difficult Moments—Anybody who has participated in IEP meetings knows that difficult moments, fraught with tension and sometimes resentment, will happen in some meetings. Staff must work collectively during the meeting to move past these moments with an acknowledgment of the

parents' position, honest responses, a spirit of positivity, and concrete plans for action. Skilled meeting participants know how to overcome difficult spots and return the tone to one of compromise, collaboration, and flexibility. The following are some techniques that can help:

Keep in mind that preventing a meeting from deteriorating is easier than getting it back on track once it's fallen apart

Take a break to recoup and discuss

Remind participants of the need for collaborative attitudes

Redirect the meeting back to the problem-solving task and the planning of necessary steps to resolution

Remind all team members that disagreement can and must be resolved without resentment and hostility

Identify the "deal-breaker" issues that may require another meeting (sometimes it's helpful to simply restate out loud the specific area of disagreement on which the team is stuck)

Bring in additional staff with specific information (with parent agreement)

Can the school and parents agree on some evaluations (school or independent) relevant to the problem areas and readdress the issue in a meeting when the results are in?

Is there a specific staffperson that seems to be triggering a defensive or hostile response on the part of the parents? The team may wish to confer with that person outside the meeting

Staff must make every effort to stay patient—mistakes and poor decisions get made when everybody just wants to end the meeting in any way

Conduct meetings in a team approach—Avoid the dynamic where only one district representative winds up doing all of the presenting, reviewing, and responding. Moreover, once a staffperson has presented their input on their specific area, this does not mean that they no longer play a role in the decision-making. All staff must collectively work toward consensus and add to the problem-solving process.

Keep the meeting "moving"—Avoid side discussions and focus the discussion on the tasks at hand. It can be helpful to remind the team of the agenda item at issue if discussion is digressing. Or, suggest that the parent set an appointment to speak about side issues with a particular staffperson.

Closing the Meeting—Even a difficult and tense meeting should be closed on a positive note. It can be helpful to point out that in making decisions

in the educational interests of the child, stakeholders involved in the decision-making process can differ about how to serve the child appropriately, but nevertheless have the same interests in mind. Another way to close the meeting is to briefly summarize the specific action areas that the team will now pursue.

The Post-Meeting Management Task—In complicated meetings where the team makes various different commitments, a staffperson should take the lead—immediately after the meeting has adjourned—to allocate the specific commitments among the staff and assign timelines for those tasks. If this is not accomplished when all promised action steps are fresh in everyone’s mind, it can be easy for certain tasks to get forgotten in the confusion of “who-was-going-to-do-what.” Make sure everyone leaves with a clear idea, hopefully in writing, of exactly whom, and by when, will get all required action items completed.

What if the parent leaves?—Generally, the team will want to document that the parent has left, and then proceed to finish its deliberations. The team should assume that the parent is in disagreement with the team’s proposals, and should follow the state-mandated process required when the IEP team did not reach consensus. The parent should also be sent a copy of all IEP team paperwork for their review. A staffperson should then attempt to contact the parent about setting up another meeting, if the parent is willing.